In the High Court of Judicature at Madras

Dated: 30/10/2003

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The Hon'ble Mr. Justice R. Jayasimha Babu
and
The Hon'ble Mr. Justice S.K. Krishnan

Writ Appeal No. 1542 of 1992

1. R. Rangasamy
2. C. Vasudevan
3. C. Vijayagopal
4. P. Kannaiyan ... Appellants

-vs-

1. The State of Tamil Nadu,
rep. by the Commissioner
and Secretary to Govt.
Transport Department,
Fort. St. George,
Chennai - 9.

2. Thiru. N. Azhagirisamy,
General Manager,
Nesamany Transport Corp. Ltd.
Nagercoil,
Kanyakumari District.

3. Thiru. P. Murugesan
General Manager,
Kattabomman Transport Corp. Ltd.
Tirunelveli.

4. Thiru. G. Ramesh,

5. L.J. Singaravelu

6. P. Dhanakoti

7. C.T. Meyappan

8. K. Anbanathan

9. R. Ramasamy

10. G. Venkatesan

11. Y.C.C. Raghavendran

12. N. Sebapathy

13. G. Selvam

14. A. Chandrasekaran

15. D. Raghupathy

16. C.D. Lakshmaiah

17. P. Subbiah

18. V. Anbalagan

19. A.P. Ellappan

20. R. Vellaiputhiyavan

21. M. Jayarajan

22. V. Dhiravidamani

23. G. Gunasekaran

24. Rajappa Abraham

25. L. Anand

26. R. Thanikachalam

27. B. Kothandaraman

28. K.R. Gajendran

29. Naina Mohammed Noorullah

30. A. Narayanaswamy

31. R. Palaniappan

32. M. Rathinasabapathy

33. K. Ramasamy

34. Vincent Clement Fernando

35. A. Kanagaval Pandiyan

36. R. Nambirajan

37. T. Chandramouli

38. N. Bakthavatchalam

39. A. Balasubramanian

40. G. Jagadeesan

41. J. Janarthanam

42. S. Kothandapani

43. A. Jagannathan

44. Ramasubramanian

45. Dhanabalakrishnan

Respondents 7 to 45 were impleaded
as per order of the Court dated 24.08.2000
by R.J.B.J. & F.M.I.K.J. made in
C.M.P. No: 4327 of 1997

46. Tamil Nadu State Transport
Corporation Ltd.,
Madurai Division III, rep.
by its Managing Director,
Nagercoil.

47. Tamil Nadu State Transport Corporation Ltd.,
rep. By its Managing Director,
Salem Division II,
Dharmapuri.

48. Tamil Nadu State Transport Corporation Ltd.,
rep. by its Managing Director,
Villupuram Division II,
Vellore.

49. Tamil Nadu State Transport Corporation Ltd.
rep. by its Managing Director,

Madurai Division IV,
Dindigul

50. Tamil Nadu State Transport Corporation Ltd.,
rep. by its Managing Director,
Madurai Division V,
6/377, Madurai Road,
Virudhunagar.

51. Tamil Nadu State Transport Corporation Ltd.,
rep. by its Managing Director,
Coimbatore Division I,
Coimbatore.

52. Tamil Nadu State Transport Corporation Ltd.
rep. by its Managing Director,
Coimbatore Division II,
Chennimalai Road,
Erode.

53. Tamil Nadu State Express Transport Corporation Ltd.
rep. by its Managing Director,
Pallavan Salai,
Chennai 2.

54. Tamil Nadu State Transport Corporation Ltd.,
rep. by its Managing Director,
Villupuram Division III,
Kancheepuram.

55. Tamil Nadu State Transport Corporation Ltd.,
rep. by its Managing Director,
Salem Division I,
12, Ramakrishna Road,
Pincode 636 007.

56. Tamil Nadu State Transport Corporation Ltd.,
rep. by its Managing Director,
Villupuram Division II,
Villupuram.

57. Tamil Nadu State Transport Corporation Ltd.,
rep. by its Managing Director,
Kumbakonam Division II,
Periyamilaguparai,
Tiruchirapalli.

58. Tamil Nadu State Transport Corporation Ltd.,
rep. by its Managing Director,
Madurai Division I,
Madurai.

59. Metropolitan Transport Corporation Ltd.
rep. by its Managing Director,
Pallavan Salai,
Chennai 2.

(*** Impleaded as per Order of the Court
dated 21.01.2003 by R.J.B.J. & N.V.B.J.
in W.A.M.P. Nos: 343 to 356 of 2003)

60. Tamil Nadu State Transport Corporation Ltd.
rep. by its Managing Director,
Kumbakonam Division I,
Railway Station New Road,
Kumbakonam.

61. Tamil Nadu State Transport Corporation Ltd.
rep. by its Managing Director,
Kumbakonam Division IV,
Kumbakonam.

62. Tamil Nadu State Transport Corporation Ltd.
rep. by its Managing Director,
Madurai Division II,
Thiruvanandapuram Road,
Vannarapettai Post,
Tirunelveli 627 003.

63. Tamil Nadu State Transport Corporation Ltd.
rep. by its Managing Director,
Kumbakonam Division III,
Karaikudi. ..... Respondents

(*** Impleaded as per order of the Court dated 24.03.2003 by R.J.B.J. &
K.R.P.J. made in W.A.M.P.
Nos: 453, 522, 658 and 666 of 2003)

Appeal under Clause 15 of the Letters Patent against the order of a
learned single Judge of this Court dated 11.08.1992 made in W.P. No: 14449

of 1990.

!For appellants : Mr. K. Alagirisami for
Mr. M. Palani

^For 1st respondent : Mrs. N.G. Kalaiselvi,
Addl. Govt. Pleader

For respondents : Mr. N.R. Chandran,
7 to 9, 11, 13, Advocate General for
15 to 59 Mr. G. Muniratnam

For respondents : M/s.Ramasubramaniam
10, 12 and 14 Associates

For respondent 60 : Mr. V. Raghupathi

For respondents
60 to 63 : Mr. V.R. Kamalanathan

:JUDGMENT

(Judgment of the Court was delivered
by R.Jayasimha Babu, J.)

On and after 01.01.1972 the State of Tamil Nadu registered several Transport Corporations under the Companies Act to carry on the transport service that was earlier being provided through the State Transport department, and by the private operators whose transport carriages were nationalised under the Tamil Nadu Fleet Operators Stage Carriages (Acquisition) Act, 1971. Four such Corporations were registered in 1972. By the end of the year 1980 there were eight transport Corporations, four more having been brought into existence in the years 1 973, 1974, 1975 and 1980. That number had increased to fifteen by the year 1987. Six more were added between 1992 to 1997. These 21 corporations that had been brought into existence, were, by the year 2001 reduced to 18 by amalgamating three of the Corporations. That number is proposed to be further reduced to eight by amalgamating the other ten.

2. The common Chairman of all the 18 State Transport Corporations all the shares of which are held by the State Government or it's nominees, is the Secretary to the State Transport Department.

3. Under the Articles of Association of all these companies, by Article 116, the Government is given the power to issue directions to the

Board of Directors of the Corporations, which directions the Boards are required to implement. The Government may, "..... from time to time issue such directions or instructions as they may think fit in the functions and conduct of the business and affairs of the Company". The Directors are required to ".....duly comply with and give effect to such directions or instructions.

4. The total number of employees in all these corporations as of 30th August 2003 was 1,18,165, of whom 746 were in the managerial cadre. There are six branches in the managerial cadre - Technical, Traffic, Accounts, Personnel, and Administration, Civil, and Medicine. The managerial cadre begins at the level of Assistant Manager. At that level there were 220 Assistant Managers and an additional 276 persons with the same rank, but in the selection grade. At the next level were 183 Deputy Managers.

5. The level above that of Deputy Manager is Senior Deputy Manager (a cadre created by the State Government on 1987) of whom there were 43 in all the Corporations put together, although in four of these Corporations there was no one in the rank of Senior Deputy Manager. Managers who rank above Senior Deputy Mangers, were twenty in number. Nine of these transport Corporations do not have any officer of that rank. There are four Senior Managers for all the Corporations put together. However, 16 of the 18 Corporations do not have any officer of the rank of Senior Manager.

6. Between 1972 and 1982 all promotions at all levels including the managerial cadre were being made within the respective Corporation and were made by the management of the concerned Corporation without any interference from the State Government. The seniority lists were confined to those working in the Corporation and did not include anyone from any other Corporation.

7. In the year 1983, for the first time, the Government drew up a seniority list on its own, of officers in the managerial cadre of all the Corporations then existing, in which it fixed the seniority for persons occupying the post of Assistant Manager, Deputy Manager and Manager, the basis being the date of their entry into the concerned cadre. That was done at a time when the rules in force in the respective Corporations did not confer any power on the State Government to draw up such a seniority list with respect to the employees of those Corporations. The Corporations, however, appear to have agreed to and deputed their officers to other Corporations whenever the Government choose to 'promote' them to the higher rank and posted them to another Corporation.

8. The State Government had, in the year 1981 constituted a Committee of the Managing Directors of some of the Corporations to recommend the adoption of a uniform set of rules governing the service conditions of all the employees in all these Corporations. The Corporations had, among its employees, persons who had come into the service of the Corporations from different sources - those who had served in the transport department earlier; those who had served the owners of private buses prior to the nationalisation of those buses by the special enactment in the year 1971; and those who had been recruited by the Corporations after their formation.

9. The set of rules which the Committee recommended for adoption was finalised some time prior to the year 1985, and in December 1985, the Government addressed letters to all the Corporations requiring them to adopt the rules as drafted by that Committee. The adoption of those rules by these Corporations was done on different dates. Between 20.02.1986 to 06.06.1987, 14 of the Corporations had adopted those rules. One Corporation adopted it in the year 1992 and two others in the year 1998. The remaining Corporation adopted these rules only in the year 2003.

10. The Thanthai Periyar Transport Corporation, Villupuram Division I to which appellants 1 to 3 had been directly recruited as Assistant Managers on 17.09.1976 and in which all of three had been promoted as Deputy Managers appellants 1 and 2 on 21.09.1982, and appellant 3 on 19.05.1983, adopted these Rules on 15.11.1986. Pattukottai Azhagiri Transport Corporation, Villupuram Division II, Vellore, in which the fourth appellant was directly recruited as Assistant Manager on 20.09.1976, and had been promoted as Deputy Manager on 19.08.1983 adopted these Rules on 28.06.1986.

11. The Rules that had been forwarded to the different transport undertakings by the Government on the 2nd December 1985 was described in the Government's letter as "Common service rules". That letter, inter alia, stated that,

"All the State Transport Undertakings shall adopt these rules after placing them before their Boards. If any State Transport Undertaking for its peculiar nature, wants to modify any of these rules, it will be done only with the approval of the Board of Directors concerned. These rules will be common for all employees, except to the workers who are governed by standing orders which will prevail over the Service Rules to ensure that workers are in no way put in a disadvantageous position."

12. The nomencalture chosen by the Government for these Rules is misleading. The rules do not provide for a 'common service' for the managerial and/or supervisory cadre of all State owned Transport Corporations. The rules are only uniform service rules, identical or near identical rules being adopted by the Corporations. The employees of the Corporations are only employees of the Corporations which appointed or absorbed them.

13. Rule 1(d) of the Service Rule is material for the purposes of this case. That Rule reads as under :

" RULE 1(d) :

The directions or orders or instructions that may be issued by the Government or any rules and regulations that may be framed by the Government from time to time, in respect of the employees of the Corporation in particular or in respect of the employees of the Public Sector Undertakings in general, as may be implemented with or without modification by the Management of the Corporation, shall have the effect of superseding the relevant provisions of these rules, until such time the relevant provisions of these rules are suitably amended or modified or varied or altered or deleted under Rule 97 below so as to conform to such directions or orders or instructions of the Government either in toto or with such modifications as may be deemed necessary by the Board."

14. In terms of that Rule, the Service Rules which the Corporations were directed to adopt could be over ridden and would stand altered to the extent the management of the concerned Corporation implements with or without modification, any direction or order or instruction issued by the Government or any Rules and Regulations framed by the Government in respect of the employees of the Corporation in particular or in respect of employees of the Public Sector Undertakings in general. On such implementation by the management, the relevant provisions of the Service Rules would stand superseded till such time the relevant rules are suitably amended or modified so as to conform to the directions or orders or instructions of the Government either in toto or with such modifications as may be deemed necessary by the Board.

15. The service rules adopted by the Corporations, which are similar in all the Corporations, provided for the appointments being made in the managerial cadre to the post of Assistant Manager, Deputy Manager and Manager. An Assistant Manager could either be directly recruited or could be brought into that cadre by way of promotion being given to persons in the supervisory cadre with five years of experience. An Assistant Manager with six years of service was eligible for being promoted as a Deputy Manager, that post being a purely promotional post for which there is no provision for direct recruitment. The next promotion was to that of the Manager for which the Deputy Manager was required to have put in atleast seven years of service. These stipulations remain in those service rules till date and have not been changed.

16. The State Government on 10.03.1987 addressed a letter to the Managing Directors of all transport Corporations wherein revised instructions were issued by it with regard to the Managerial cadre of State Transport Undertakings. That letter, inter alia, stated that the minimum period of service for promotion to the next higher grade in the managerial cadre in the technical / traffic branch in the State Transport Undertaking thereafter would be as follows :
"

For Promotion From	To	Minimum period of service prescribed to become eligible for promotion
Assistant Engineer	Assistant Manager	Five years
Assistant Manager	Deputy Manager	six years
Deputy Manager	Senior Deputy Manager	Four years
Senior Deputy Manager	Manager	Four years

Manager Senior Manager Seven years

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17. The post of Senior Deputy Manger was thus introduced into the managerial cadre without any amendment having been effected to the service rules. Promotion to the post of Manager was, thereafter to be made from among the Senior Deputy Managers and not directly from Deputy Managers. The number of years of service required of a Deputy Manager for promotion to Senior Deputy Manager was prescribed as four years, and from that post of Senior Deputy Manager to Senior Manager as another four years. A new post of Senior Manager was also introduced and a period of seven years of service as Manager was made a prerequisite. That letter also provided for time bound promotion being given from the post of Assistant Engineer to Assistant Manager and from Assistant Manager to Deputy Manager on completion of the prescribed period of service of five years and six years respectively. All the Corporations were requested to take action in accordance with that letter.

18. Shortly thereafter, on 01.04.1987, the Government issued another letter to the Managing Directors of the State Transport Corporations with regard to the fixation of inter se seniority among the Deputy Managers, for promotion to the newly introduced cadre of Senior Deputy Manager. To that letter was also annexed a seniority list of Deputy Managers (Technical/Traffic), which the Government itself had prepared based on the criteria set out in that letter and limiting the number in that list to the first 30 persons which figure of 30 was mentioned as "the number of vacancies available in the Senior Deputy Manager cadre now". There is no record of any cadre strength having been fixed with regard to any of the post in the managerial cadre, either by Government or by any of the Corporations.

19. The criteria set out in that letter for determining the inter se seniority of officers in the rank of Deputy Managers reads as under :
" A. The date of first appointment in the Assistant Manager Cadre should be the base for determining seniority.
B. A weightage of one year for every three years of past service in the supervisory cadre should be given for the Engineering graduates. As the span of service in the supervisory group is not much and to minimise the anomaly, a weightage of 4 months for every completed year of service in the supervisory group will be treated as one year, and the service below 6 months will be left out.
C. For persons absorbed from Government departments, no weightage for their service in the parent department will be given, as they have been given sufficient weightage for their permanent absorption in the State Transport Undertakings.
D. For Tamil Nadu State Transport Corporation (erstwhile) employees, their Tamil Nadu Public Service Commission seniority should be maintained.
E. A total service of 10 years in both the Assistant Manager and Deputy Manager cadres out of which a minimum two years of service as Deputy Manager will be insisted upon as qualifying service for promotion as Senior Deputy Manager."

20. According to the Government these criteria were evolved after discussions with the federation of officers of the State Transport Corporation, in order to ensure that all those in the managerial cadre in all the Corporation have equal opportunity in seeking higher positions in all the State Transport Corporations on the basis of criteria which recognises their longer period of service in the Corporation.

21. After the creation, by the letter of 10.03.1987, of the post of Senior Deputy Manager and Senior Manager the Government, while drawing up a common seniority list, for drawing up of which there is no provision in the service rules, adopted criteria which was at variance with what had been adopted in the year 1983 for determining the eligibility for promotion of an officer in the cadre of Deputy Manager to the post of Senior Deputy Manager for which, service in the rank of Deputy Manager was not to be the sole criterion, but was to include consideration of the service rendered as an Assistant Manager, and for determining seniority in that post of Assistant Manager, even the length of service rendered as an official in the supervisory cadre before promotion to the cadre of Assistant Manager was to be taken into account. Promotion to the post of Senior Deputy Manager was to be given despite the minimum period of four years as Deputy Manager having been prescribed, even to those who had put in only two years of service as Deputy Manager, if their total service as Assistant Manager and Deputy Manager together was ten years or more.

22. The new criteria, treats persons who belong to the same cadre namely Deputy Manager differently solely on the basis of the source of their recruitment to the lower cadre of Assistant Manager for the purpose of determining their eligibility for further promotions from Deputy Managers to Senior Deputy Managers.

23. Not only was weightage given to those who came from the Supervisory cadre for their service in supervisory cadre while fixing their seniority in the cadre of Assistant Manager, resulting in their being ranked above the direct recruits who had entered the cadre of Assistant Manager earlier, even in the higher cadre of Deputy Manager they stole a big march over those who had been promoted to that cadre earlier by obtaining promotions as Senior Deputy Managers even though their service as Deputy Managagers was less than that of the direct recruit Assistant Managers who had been promoted earlier as Deputy Managers.

24. Thus, the entire further career prospects of those who had entered the cadre of Assistant Manager by way of direct recruitment and had been promoted as Deputy Managers was adversely affected.

25. The four appellants before us are persons who had been directly recruited to the post of Assistant Manager in the year 1976 and had thereafter been promoted to the rank of Deputy Manager in 1982/1983. The first appellant had been ranked as No: 1 in the seniority list of Deputy Managers serving in the Corpo ration in which he was employed and had occupied the position at Sl. No: 26 in the seniority list that had been drawn up by the Government in May 1983 of the Deputy Managers working in all the State Transport Corporations.

From that the first eighteen had been promoted as Deputy Managers before the redrawing of the list in the year 1987. The other three appellants had been ranked at serial numbers 27, 28 and 31 respectively in that list.

26. As a result of the application of the new criteria the names of all the appellants were omitted from the list of 30 Deputy Managers which the Government drew up on 1.4.1987.

27. On 25.05.1990 persons who had entered the cadre of Deputy Managers long after the appellants, were promoted as Senior Deputy Managers, by the State Government which issued the order of promotion in the purported exercise of it's power under Article 106 of Articles of Association. Subsequently, numerous others who had entered the cadre of Deputy Manager after the appellants, were promoted.

28. In 1995, during the pendency of this appeal, appellants 2 to 4 were promoted as Senior Deputy Managers. Appellant 1 continues to stagnate as Deputy Manager even after 21 years of service in that cadre. According to the State that is because of disciplinary proceedings that was taken against him. He had been given warnings on 07.05.1 979 and 08.06.1979, and had been suspended on 21.07.1982 for a day, which suspension was later treated as leave. On 01.08.1989 one increment was postponed without cumulative effect for not submitting a vehicle stoppage report and not applying for refund of tax. In respect of a charge memo issued on 16.10.1995 with regard to a recruitment made in 1986, censure was ordered on 07.12.1999. In respect of alleged irregularities that occurred in 1990 a charge memo was issued on 31 .10.1995, in which one Nambirajan was also said to have been involved, and who notwithstanding that charge memo has since been promoted as Senior Deputy Manager. On 18.11.2000 recovery from the first appellant of a sum of Rs.7070/50p was ordered. According to the Respondent State, the first appellant is eligible for promotion since 20.8.200 2.

29. Mr. K. Azhagirisamy, Learned Senior Counsel for appellants submitted that the Transport Corporations being companies registered under the Companies Act, the employees of the Corporations are employees not of the Government but of the Corporations and that the determination of their service conditions could only be made by the concerned Corporation and not by the Government notwithstanding the fact that the Government happens to own all the shares in those Corporations.

30. The further submission was that the Service Rules adopted by the Corporations did not provide for the post of Senior Deputy Manager or Senior Manager, that the rules as they stand even now only provides for the post of Assistant Manager, Deputy Manager and Manager and that the appellants, being persons who had acquired the requisite years of experience, are entitled to further promotion in accordance with those rules.

31. With regard to the seniority list drawn up by the State Government, the submission was that the Government had no power to do so as the Government has not been vested with such power under any statute and the Articles of Association of the concerned Corporations do not confer any power

on the State Government to determine the service conditions of their employees much less to draw up a seniority list common to all the Corporations even when none of the Corporation are in any way inter-linked, none of the Corporations being a holding company for the other Corporations.
32. As regard to the criteria set out in the letter of the Government of April 1987, the submission was that those criteria run counter to settled law in as much as it discriminates among persons belonging to the same cadre solely on the basis of their source of recruitment to that cadre. The cadre of Deputy Manager being one, it is impermissible and illegal for the employer to bring in a distinction among those belonging to the cadre of Deputy Manager with reference to the source from which those persons had entered the lower cadre of Assistant Manager, for the purpose of their further promotion.

33. Our attention was invited by counsel to the decision of the Constitution Bench of the Supreme Court in the case of Electronic Corporation of India vs. State of Andhra Pradesh [1999 (4) S.C.C. 458], more particularly to the observation at paragraph 15 which reads thus,
" A clear distinction must be drawn between a company and its shareholders, even though that shareholder may be only one and that the Central or a State Government. In the eye of law, a company registered under the Companies Act is a distinct legal entity other than the legal entity or entities that hold its shares."

34. In support of the same proposition our attention was also invited to the Two Judge Bench decision of the Supreme Court in the case of Heavy Engineering Mazdoor Union vs State of Bihar and others [A. I.R. (1970) S.C. 82]. The Court observed at paragraph 4 of that judgment :
" Therefore, the mere fact that the entire share capital of the respondent-company was contributed by the Central Government and the fact that all its shares are held by the President and certain Officers of the Central Government does not make any difference. The company and the share-holders being, as aforesaid, distinct entities the fact that the President of India and certain officers hold all its shares does not make the company an agent either of the President or the Central Government."

35. The recent decision of the Supreme Court in the case of A.K. Bindal and another vs. Union of India and others [2003 (5) S.C.C. 163] more particularly the observation at paragraph 17 was relied upon:
" The legal position is that identity of the government company remains distinct from the Government. The government company is not identified with the Union but has been placed under a special system of control and conferred certain privileges by virtue of the provisions contained in Sections 619 and 620 of the Companies Act. Merely because the entire shareholding is owned by the Central Government will not make the incorporated company as Central Government. It is also equally well settled that the employees of the government company are not civil servants and so are not entitled to the protection afforded by Article 311 of the Constitution (Pyare Lal Sharma vs. Managing Director (1989) 3 S.C.C. 448). Since employees of government companies are not government servants, they have absolutely no legal right to claim that the Government should pay their salary or that the additional expenditure incurred on account of revision of their pay scale should be met

by the Government. Being employees of the companies it is the responsibility of the companies to pay them salary and if the company is sustaining losses continuously over a period and does not have the financial capacity to revise or enhance the pay scale, the petitioners cannot claim any legal right to ask for a direction to the Central Government to meet the additional expenditure which may be incurred on account of revision of pay scales."

36. Counsel placed strong reliance on the often quoted observations of the Constitution Bench of the Supreme Court in the case of State of Jammu and Kashmir vs. Triloki Nath Khosa and others [1974 (1) S. C.C. 19]. At paragraph 45 of that judgment, the Court after referring to the case of Roshanlal Tandon [A.I.R. 1967 S.C. 1889] observed thus,
" 45. Thus, all that Roshan Lal's case lays down is that direct recruits and promotees lose their birth-marks on fusion into a common stream of service and they cannot thereafter be treated differently by reference to the consideration that they were recruited from different sources. Their genetic blemishes disappear once they are integrated into a common class and cannot be revived so as to make equals unequals once again."

37. Our attention was invited to the decision rendered by a Two Judge Bench of the Supreme Court in the case of General Officer Commanding-in-Chief and another vs. Dr. Subhash Chandra Yadav and another [1988 (2) S.C.C. 351], wherein it was held that the Central Government had no power under the Cantonments Act to frame a statutory rule providing for inter Board transfer of employees of the Cantonment Boards constituted under the Act. At paragraph 19 of that Judgment it was observed thus,
" It is true that under clause (c), as it now stands, the Central Government can frame rules pertaining to conditions of service of the Cantonment Board employees. But, in our opinion, even in spite of substituted clause (c), the Central Government will not be entitled to frame rules for transfer of an employee from one Cantonment Board to another within the State for the reasons stated already, namely, (1) the Cantonment Boards are autonomous bodies ; (2) the service under the Cantonment Board is neither a centralised service nor is it a service at the State level; and (3) any such transfer of an employee will mean termination of service of the employee in the Cantonment Board from where he is transferred and a fresh appointment by the Cantonment Board which he joins on such transfer."

38. Learned Advocate General who appeared for the State Government as also for the respondent Transport Corporations, submitted that it is open to the State Government to give binding directions to the Transport Corporations not only by virtue of Article 106 of the Articles of Association of all these Corporations, but also under Rule 1(d) of the common service rules, which all these Corporations have adopted, though on different dates, and submitted that though the seniority list was drawn up and promotions, transfers, and postings, were ordered by the Government, the effectuation of such orders was by the Corporations, which by appropriate resolutions deputed their officers to other corporations or agreed to receive on deputation officers of other corporations.

39. He placed before the Court, the resolutions adopted by the

different Corporations adopting common service rules as also the resolutions adopted by the Corporations deputing their officers to other Corporations together with the condition of deputation. The resolutions of the Corporations accepting the deputation of employees of other Corporation for posts within their Corporation were also placed before the Court.

40. The criteria adopted by Government while drawing up the seniority list, it was submitted, were evolved after discussion and with the consent of the officers associations, and that weightage given for service rendered in the supervisory cadre is legal, just, and equitable. None of those affected barring the present appellants had challenged the criteria or the seniority list.

41. His last submission, placing reliance on the decision of the Three Judge Bench of Supreme Court in the case of S.S. Bola and others vs. B.D. Sardana and others [1997 (8) S.C.C. 522], was that promotion already given on the basis of the seniority determined under the rules which has been so far followed should not be annulled notwithstanding the changes in the seniority that may be brought about by virtue of what the Court may decide.

42. The mode of control adopted by the State Government over the Corporations owned by it has been by regarding the managerial cadre in all those Corporations as being part of common Service controlled by the Government directly, even when no such common service has been constituted. There is no common service titled the Transport Corporation Service of the State of Tamil Nadu in which persons are appointed to different cadres and are deputed to hold posts in different Corporations. The Government does not regard those in the managerial cadre of these Corporations, as it's servants.

43. Counsel sought to sustain the approach adopted by the Government by analogy by referring to the common cadre of service constituted under section 75 of the Tamil Nadu Co-operative Socieites Act, 1983 for various posts in co-operative societies.

44. Unlike the Co-operative Societies Act, the Companies Act does not permit or empower the State to constitute a common cadre for all companies or any class of companies including Government companies. Even in case of amalgamation of companies, the services of employees cannot be transferred against their will, from one company to another.

45. Articles 106 of the Articles of Association of these Corporations does not enable the Government to directly run any of these Corporations. All that it can do is to direct the Board of Directors to do what the Government requires them to do in regard to their business and other affairs of the company. Thereafter, it is for the concerned Board of Directors to carry out the directive. If the Directors do not carry it out, the Government cannot itself directly do what the Company alone is empowered to do. An illustration of this is that of Pallavan Transport Corporation which, though directed by the Government to adopt the common service rules way back in the year 1985, had chosen to disregard that instruction and adopted those rules, with some

modification only in the year 2003, after a long period of nearly 18 years.

46. The Government had the power under Rule 1(d) to give directions, orders or instructions to the Board of Directors of the Company and if such orders, directions or instructions were implemented the service rules would stand superseded to the extent to which the directions, orders and instructions of the Government were implemented by the Board.

47. Rules 1(d) refers to the possibility of the Government taking on itself the task of even framing the rules and regulations in respect of the employees of a particular Corporation or all the employees of the Public Sector Undertaking in general. This is an unusual power granted to the owner of all the shares of the Company disregarding the position of the Board of Directors which is ultimately responsible, under the terms of the Companies Act for the management of the affairs of the Company. However, the rules and regulations even if framed by the Government will not have any impact and will not bind the companies until and unless the management of the Corporations adopt it for their employees, and give effect to the same.

48. The documents placed before the Court by the learned Advocate General clearly show that though the Government purported to make transfers from one Corporation to another and also give promotions to the officers in the managerial cadre from one cadre to another, all the Corporations have accepted what had been done by the Government and all of them have passed resolutions either deputing their officers for rendering service in another Corporation or accepting the service of the employee of another Corporation to hold the post in that Corporation in accordance with the desire expressed by the Government in the orders issued by the Government from time to time.

49. It is only Rule 1(d) of the Service Rules adopted by the Corporation and the actions taken by the respective Corporation in conformity with the order of 'promotion' and 'transfer' issued by the Government, that can sustain he deputation of the officers from one Corporation to another.

50. Although the manner in which the Government has gone about exercising it's control over the managerial staff of these Corporations, is rather unusual nevertheless, having regard to the substance of the matter and the fact that the Corporations have passed requisite resolutions, and the order which the official was required to obey ultimately was not the order of the Government but the order issued by the concerned Corporation, it cannot be said that the deputation of an officer from one Corporation to another is illegal.

51. Though the drawing up of a common seniority list for the managerial cadre is neither contemplated nor provided for in the uniform Service Rules which, as noticed earlier, do not, in fact, provide for a common service, by adopting the devise of drawing a common seniority list, and giving promotions and effecting transfers on the basis of that list, Government had indirectly created a common service. By empowering itself to give orders, direction or instructions regarding employees of Corporations who are governed by the Uniform Service Rules which would on their being effectuated, over-ride

the Service Rules, it has compelled officers of all Corporations to serve at the level determined by the Government and in the Corporation specified by it.

52. As the various Corporations have been deputing or accepting the deputation of officers in accordance with Government's directions, which directions are sustainable under Rule 1(d) of the Uniform Service Rules adopted by the Corporations, the post of Senior Deputy Manager is to be regarded as having been provided for in the Service of the Corporations, and the eligibility criteria, as also criteria to be adopted for determining the seniority in the cadres of Deputy Manager and Assistant Manager, as set out in the letters of the Government also regarded as having been adopted by each of these Corporations.

53. As to whether the criteria thus adopted for determining seniority of Deputy Manager is sustainable in law has, therefore to be examined.

54. In cadres which are filled partly by direct recruitment, and partly by promotion, it is not always necessary that the promotee should rank below the direct recruit who had entered the cadre earlier. The Indian Administrative Service (Regulation of Seniority) Rules, 1 987 provides for recruitment to the service from different sources - by way of direct recruitment through competitive examinations, by promotions from among officers belonging to the State Civil Services; and by selection of officers belonging to the other services under the State Government. Regulation 3 provides for assignment of a year of allotment to those who enter the service in accordance with the provision of the Regulations. Regulation 3 (3) provides that,
" (i) the year of allotment of a direct recruit officer shall be the year following the year in which the competitive examination was held:
(ii) The year of allotment of a promotee officer shall be determined with reference to the year in which the meeting of the Committee to make selection, to prepare the Select List on the basis of which he was appointed to the Service was held and with regard to the continuous service rendered by him in the State Civil Service not below the rank of a Deputy Collector or equivalent, up to the 31st day of December of the year immediately before the year in which meeting of the Committee to make selection was held to prepare the Select List on the basis of which he was appointed to the Service, in the following manner :
(a) for the service rendered by him up to twenty-one years, he shall be given a weight of one year for every completed three years of service, subject to a minimum of four years;
(b) he shall also be given a weightage of one year for every completed two years of service beyond the period of twenty-one years, referred to in sub-clase (a), subject to a maximum of three years. "

55. Persons who have served in administrative or police service in the States when promoted to the IAS and IPS are given prior years of allotment and given weightage for their service already rendered in the State service. That is because of the special features of these all India services which are to have a blend of youth and experience and are required to provide opportunity to those in State service to become a part of All India Service.

Experienced officers from the State services cannot possibly be placed below the newest raw direct recruit of the year.

56. The entry level post in the managerial cadre in these Corporations is that of Assistant Manager. The appellants were directly recruited at that level. The advertisement to which they had responded sets out the qualification and experience which a candidate had to fulfill, as B.E. Degree in Mechanical or Automobile Engineering and practical experience in an automobile workshop or stores for a period of not less than three years.

57. Persons directly recruited at the level of Assistant Managers are, therefore, persons who already had experience besides the academic degree. Persons promoted to that level from the supervisory cadre in the Corporation are also persons who have experience. However, there is no justification for giving any additional weightage for that experience, while promoting them to the post of Assistant Manager. Once they enter the cadre of Assistant Manager they have to rank, for the purpose of seniority, with reference to the date on which they entered the cadre of Assistant Manager. Placing the promotee Assistant Manager above those directly recruited prior to their promotion is clearly arbitrary and unjustifiable.

58. The promotional level above that of an Assistant Manager is Deputy Manager, for which the prescribed period of service is six years. The level above that of Deputy Manager is the post of Senior Deputy Manager. While effecting promotion to the post of senior Deputy Manger, it would be wholly irrational to take into account the number of years of service rendered as Assistant Manager, instead of confining attention only to the period of service rendered as Deputy Manager.

59. All persons in the rank of Deputy Managers would have served for atleast six years as Assistant Managers. Once they enter the rank of Deputy Managers all of them are to be treated similarly and no discrimination can be made among them on the basis of the source from which they had entered the cadre of Assistant Manager. The discrimination made among the Deputy Managers while effecting promotion to the post of Senior Deputy Manager by requiring the direct recruit Assistant Managers to serve as Deputy Managers atleast for four years while allowing persons who had been promoted as Assistant Managers to serve only for two years as Deputy Managers provided they had served for eight years as Assistant Manager, while effecting promotion to the level of Senior Deputy Manager, is clearly a discriminatory, and is wholly unsustainable.

60. All Deputy Managers belong to one common cadre, and their birth marks before they entered the cadre, disappear on their entry into that cadre. The criteria adopted has resulted in persons who entered the cadre of Deputy Manager long after the directly recruited Assistant Managers had entered the cadre, getting promotions as Senior Deputy Managers despite the longer service rendered by the direct recruits in the cadre of Deputy Managers. Such discrimination is clearly unjust.

61. The criteria adopted, therefore, are clearly violative of the rights of the direct recruits to be accorded equal, fair and non arbitrary

treatment in matters concerning their promotions. Till the year 1987 promotions were being made on the basis of seniority list drawn up with reference to the date of entry into the relevant cadre. In that year, for the first time new criteria which is clearly discriminatory and which has resulted in the direct recruits being meted out an unfair and prejudicial treatment was evolved. On and after 1990 many persons far junior to the appellants in the cadre of Deputy Managers on the basis of the date of entry into that cadre, have been promoted ignoring the legitimate claim of the appellants.

62. The appellants came to this Court within a few months after their juniors were promoted in May 1990. They have been agitating their grievance since then. The appeal filed by them against the dismissal of their writ petitions had been allowed earlier. On further appeal, the matter was directed by the apex Court to be reheard after impleading the transport corporations, as they had not been impleaded earlier and could not place before the Court the evidence regarding the adoption of the Common Service Rules. All the Corporations, after their impleadment, have not added anything new to the justification that the State had sought to offer earlier with regard to the criteria adopted, which criteria had been found to be violative of the rights of the direct recruits even when the matter was considered earlier.

63. The denial of the promotion to the appellants to the rank of Senior Deputy Manager, by preferring persons who had entered that cadre subsequent to the appellants, such other persons having wrongly been regarded as eligible for consideration on the basis of legally unsustainable criteria, is illegal and the appellants' grievance merits redressal. The appellants shall be given promotions as Senior Deputy Managers with effect from the date on which the persons who entered the cadre of Deputy Manager after the appellants, were promoted as Senior Deputy Managers, subject to the appellants being otherwise found fit.
64. The Corporations would do well to update their Service Rules so that employees are made aware of all the rules which govern their service.

65. Having regard to the fact that the criteria, though unsustainable, on the basis of which respondents and others were promoted earlier than the appellants, had been evolved after discussion and with the consent of the officers associations, and the criteria has not been challenged by others, we consider it just to direct that those already promoted on the basis of the criteria which is now held to be unsustainable, not be reverted and if necessary, supernumerary posts in the appropriate Corporations created in which they shall be accommodated.
65. The appeal is allowed accordingly.

(R.J.B.,J.)(S.K.K.,J.)

30.10.2003

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Website : Yes

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